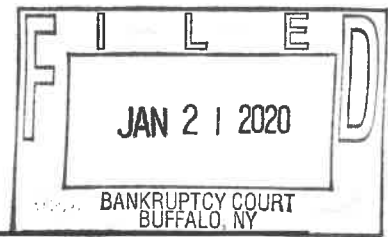


**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NEW YORK**



In re:

Shane Christopher Buczek


CASE NO. 1-19-11441-CLB

**NOTICE OF MOTION OF MOTION FOR ADJOURNMENT 341 MEETING UNTIL
RESOLUTION OF DISPUTED MATERIAL FACTS AND REQUEST FOR
EVIDENTIARY HEARING**

PLEASE TAKE NOTICE that upon the NOTICE OF MOTION FOR ADJOURNMENT 341 MEETING UNTIL RESOLUTION OF DISPUTED MATERIAL FACTS AND REQUEST FOR EVIDENTIARY HEARING the undersigned will move at a hearing to be at the **United States Bankruptcy Court, Western District of New York, Robert H. Jackson U.S. Courthouse, 2 Niagara Square, 5th Floor Buffalo, New York set for 10:00 AM February 10, 2020. Buffalo Orleans Courtroom Honorable Carl L. Bucki for an Order and Scheduling an Evidentiary Hearing to conducted Standing by KeyBank and Attorney Dave P. Case.**

Furthermore, Debtor hereby respectfully moves this court for an Order granting EXTENSION OF TIME Debtor an opportunity to bring in a professional and allow **testimony form the signer of the note** and the preparers of the note and alleged **security instruments** submitted by KeyBank, in **order to authenticate or invalidate the Note and security instruments** submitted by alleged creditor KeyBank, since the reliance upon these documents by this court in its determinations are based upon these **Material Facts in controversy**. See (In re: **Reddy 2017 Bankr.** LEXIS 1528 Case No. 16-50689 (JAM)).

DATED: January 21, 2020

/s/ By: 

Shane Christopher Buczek, Debtor Pro-Se

To:

Trustee Chapter 13

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**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In re:

Shane Christopher Buczek
Debtor(s)

Case No. **1-19-11441- CLB**
Chapter 13

**MOTION FOR ADJOURNMENT 341 MEETING UNTIL RESOLUTION OF DISPUTED
MATERIAL FACTS AND REQUEST FOR EVIDENTIARY HEARING**

Comes Now the Debtor, Shane Christopher Buczek, and respectfully files this Motion for adjournment in this case requesting that this honorable court postpone these proceedings on the matters before it until such time as a hearing can be held to resolve the following **Material Facts** in controversy :

- 1) That the **Note** and all other **security instruments** alleged to be binding against this Debtor's property in this case by the alleged creditor KeyBank are **inauthentic**.
- 2) That the **Note** and all other **security instruments** alleged to be binding against this Debtor's property by alleged creditor KeyBank are **forged** and **altered**.
- 3) That the **Note** and all other **security instruments** alleged to be binding against this Debtor's property in this case by the alleged creditor KeyBank are neither original, authentic or **enforceable documents**.
- 4) That the alleged creditor KeyBank is truly wholly **unsecured** **disinterested party** in this case.
- 5) That the alleged creditor KeyBank **does not retain any security** in this debtor's property.

6) That KeyBank and **David P. Case** have acted in **bad faith** by **misrepresenting** to this court **any valid security interest in this Debtor's real property.**

7) That the **note** and **Security instruments** **presented** to this court by creditor KeyBank **constitute fraud upon this court, fraud against the United States Trustee and fraud against the Debtor.**

8) That, despite the **lies** set forth to this court by attorney **David P. Case**, the issues above have **never been adjudicated in this or any other court**, and that since **these issues have never been raised** or resolved by a court or through any hearing and therefore the **principle of res judicata does not apply in this case regarding these issues. See Attachment (1) 564 B.R. 190 United States Bankruptcy Court, W.D. New York In re Sadigursky**

9) The fact that the resolution of the issue of the submission by alleged creditor KeyBank of false documents in a Federal Court are a Federal Issue and not in any way governed or restricted by the **Rooker-Feldman doctrine because they have never been raised or adjudicated previously in any state court.**

10) That alleged creditor KeyBank **is not the owner**, in **due course** or otherwise, of any **enforceable security interest in this case.**

11) That since these numerous issues of Material Fact are at controversy in this case, an adjournment until a hearing on this Motion is held is appropriate in the interests of fairness, justice and judicial economy.

Therefore based upon the foregoing this court should postpone this hearing and hold an **evidentiary hearing** to allow the Debtor an opportunity to bring in a professional and allow **testimony form the signer of the note** and the preparers of the note and alleged **security**

instruments submitted by KeyBank, in **order to authenticate or invalidate the Note and security instruments** submitted by alleged creditor KeyBank, since the reliance upon these documents by this court in its determinations are based upon these **Material Facts in controversy**. See (In re: Reddy 2017 Bankr. LEXIS 1528 Case No. 16-50689 (JAM)).

WHEREFORE having **validly** demonstrated the issues of **Material Facts** that are at controversy in this case, the Debtor respectfully moves this court for a postponement of these proceedings until such time as these issues above have been resolved and adjudicated through an **Evidentiary Hearing.**

Respectfully submitted this 21st day of January 2020, I, the debtor Shane Christopher Buczek do hereby affirm under penalty of perjury that the foregoing is truthful and correct to the best of my knowledge and belief.

By: Shane Christopher Buczek

Shane Christopher Buczek, Debtor, pro se

Attachment (1)

564 B.R. 190

United States Bankruptcy Court, W.D. New York.

IN RE Meyer SADIGURSKY
and Simona Sadigursky Debtor
Meyer Sadigursky and Simona Sadigursky Plaintiff

v.

LSF9 Master Participation Trust, Caliber Home
Loans, Inc., [DLJ Mortgage Capital, Inc.](#), Selene
Finance LP, GRP Loan, LLC, Santander Bank
National Association, f/k/a Sovereign Bank,
National Association, f/k/a Sovereign Bank,
as Successor by Merger with Independence
Community Bank, as Successor by Merger
with SI Bank and Trust f/k/a Staten Island
Savings Bank, State Street Bank and Trust
Company, Flagstar Bank, FSB, Defendants

Case No. 15-10034 K

AP No. 16-1024-K

Signed January 3, 2017

Synopsis

Background: Debtors brought adversary proceeding challenging claimants' standing to file proofs of claim and to seek to foreclose on mortgage, and claimants moved to dismiss on [Rooker-Feldman](#) grounds.

[Holding:] The Bankruptcy Court, [Michael J. Kaplan, J.](#), held that mere assertion by claimants filing proofs of claim for sums owing on debtors' mortgage debt, and seeking to foreclose on mortgage, that they were successors in interest to creditor that had obtained judgment in state court foreclosure action did not deprive bankruptcy court of jurisdiction, under [Rooker-Feldman](#) doctrine, to consider objections to claimants' standing to file proofs of claim or to foreclose on mortgage.

So ordered.


West Headnotes (2)

[1] Courts


 Federal-Court Review of State-Court Decisions; [Rooker-Feldman Doctrine](#)

When [Rooker-Feldman](#) doctrine applies, it bars federal court inquiry at any level below the United States Supreme Court; lower federal courts lack jurisdiction to order anything at all.

[2] Bankruptcy

 Claims or proceedings against estate or debtor; relief from stay

Courts

 Debtor and creditor; bankruptcy; mortgages, liens, and security interests

Mere assertion by claimants filing proofs of claim for sums owing on debtors' mortgage debt, and seeking to foreclose on mortgage, that they were successors in interest to creditor that had obtained judgment in state court foreclosure action did not deprive bankruptcy court of jurisdiction, under [Rooker-Feldman](#) doctrine, to consider objections to claimants' standing to file proofs of claim or to foreclose on mortgage; too many dots remained to be connected, and bankruptcy court still had jurisdiction to determine its own jurisdiction by inquiring into whether claimants were in fact successors in interest to creditor that obtained this state court judgment.

Attorneys and Law Firms

[Joseph N. Froehlich, Esq.](#), [Casey B. Howard, Esq.](#), LOCKE LORD LLP, 200 Vesey Street, 20th Fl., New York, New York 10281, Attorneys for Defendants LSF9 Master Participation Trust and Caliber Home Loans, Inc.

[Kristen D. Romano, Esq.](#), MCGLINCHEY STAFFORD, 112 West 34th Street, New York, New York 10120, Attorneys for Defendants DLJ Mortgage Capital, Inc. and Selene Finance, LP

Arthur G. Baumeister, Jr., Esq., AMIGONE, SANCHEZ & MATTREY, LLP, 1300 Main Place Tower, 350 Main Street, Buffalo, New York 14202, Attorneys for *191 Plaintiffs Meyer Sadigursky and Simona Sadigursky

OPINION AND ORDER DEFERRING DECISION ON
ROOKER-FELDMAN ISSUE PENDING AN INQUIRY¹

Michael J. Kaplan U.S.B.J.

The matter at Bar are Motions by Defendants LSF9 Master Participation Trust and Caliber Home Loans, Inc., and DLJ Mortgage Capital, Inc. and Selene Finance LP to dismiss this AP which challenges their standing to foreclose a mortgage and right to file a proof of claim on real property commonly known as 181 Bay 25th St., Brooklyn, New York in New York State Supreme Court, Kings County. The Motions are based in part on *Rooker-Feldman*.

[1] In the year 2009 an entity named “GRP Loan, LLC” obtained what a state court termed a “judgment” by default in a foreclosure action as to real estate owned by these Debtors. It was not a “Judgment of Foreclosure and Sale” under NY Real Property Actions and Proceedings Law § 1351, and so it seems to be agreed among the parties that what is at issue here is an *interlocutory order* of the foreclosure court. There is authority for the proposition that some interlocutory state court orders are entitled to “preclusive effect” in a subsequent federal suit. [See *In re 56 Walker, LLC*, 2014 WL 1228835 (Bankr. S.D.N.Y. 2014), in which Bankruptcy Judge Gropper cites *Teachers Ins. & Annuity Ass’n of Am. v. Butler*, 803 F.2d 61 (2d Cir. 1986) and *In re Briarpatch Film Corp.*, 281 B.R. 820 (Bankr. S.D.N.Y. 2002)]. “Preclusive effect” is, however, not like a *Rooker-Feldman* defense. If a defendant in an action in federal court properly raises and sustains a *Rooker-Feldman* objection to jurisdiction, it need not prove-up (among other things) its entitlement to protection under the various “finality” doctrines that otherwise (1) might require examination of the record before the state court, or (2) might have been waived or forfeited, etc. in some fashion before or in the subsequent action in federal court. When

Rooker-Feldman applies, it bars federal court inquiry at any level below the U.S. Supreme Court. The lower federal court lacks jurisdiction to order anything at all.

In this case, however, it is by no means clear that *Rooker-Feldman* is applicable. Those invoking it assert that they are downstream holders of whatever rights GRP Loan, LLC could assert here if it still held the mortgage and note and could assert *Rooker-Feldman* for itself², but the movants do not include GRP Loan, LLC.

*192 [2] Simply stating that “I am a defendant who bought rights derived from a state court ruling and I assert a *Rooker-Feldman* objection to the jurisdiction of this court” cannot, of itself, strip this Court of jurisdiction to determine its own jurisdiction: to inquire into the matters (factual or otherwise) that are relevant to whether it actually has jurisdiction.³

There are too many dots to be connected before this Court might conclude that it has no jurisdiction (under *Rooker-Feldman*) to order, at the least, further scheduling (as opposed to anything dispositive).

For now the *Rooker-Feldman* argument for dismissal is suspended (11 U.S.C. § 305). The Court will consider it again when and if necessary at the Court's sua sponte discretion, or upon suggestion by any party.

So decided, the next matters to be considered are questions of (1) standing, and (2) preclusion. Some discovery demands might be an efficient way to proceed. (See F.R.Civ.P. Rule 1.) Scheduling as to these matters will be discussed by telephonic conference on January 9, 2017 at 2:00 pm in Part I.

SO ORDERED

All Citations

564 B.R. 190

Footnotes

- 1 *Rooker-Feldman* is a term that identifies a doctrine regarding federal court jurisdiction under Article III of the U.S. Constitution. The doctrine explains that certain state court decisions are reviewable in federal court only after whatever state court appeals provide a path to the U.S. Supreme Court. *Rooker* is *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923) and *Feldman* is *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983). The most recent pronouncement by the High Court on the doctrine is in *Exxon Mobil*

Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005). Here in the Second Circuit, the binding decision is *Hoblock v. Albany Cnty. Bd. of Elections*, 422 F.3d 77 (2005), which is noted below.

2 The Debtors challenge the Defendants' standing with great intensity. The caption of the AP suggests the complexity of the stream of ownership of mortgage rights.

It is not always a certainty that a downstream owner of certain interests has the same rights as the initial holder. See this writer's decision in the case of *In re 256-260 Limited Partnership*, Case No. 14-11582 K (5/20/15).

3 A similar, but non-analogous proposition was raised in this Court in the case of *In re Zywczyński*, 210 B.R. 924 (1997). The defendant in that case was the State of New York. Its "sovereign immunity" defense has a certain similarity to the Defendants' *Rooker-Feldman* assertion here. If either defense is upheld, then this Court may not "adjudicate" anything at all that affects the party that properly presents it. In *Zywczyński* it was clear that the State was immune from responding to appropriate inquiry. This Court ordered only an "inquest".

In the present case, it is not clear that the parties seeking to block adjudication here have standing to do so. A procedure similar to that utilized in *Zywczyński* seems practical, appropriate, and not violative of Article III. See, generally, *Hoblock, supra*, interpreting *Exxon, supra*, which severely overruled many lower-courts' expansive view of *Rooker* and *Feldman*.

End of Document

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**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In re:

Shane Christopher Buczek
Debtor(s)

Case No. **1-19-11441- CLB**
Chapter 13

CERTIFICATE OF SERVICE

I, Shane Christopher Buczek certify that on, **January 21st, 2020**, I served true correct copies of:
**MOTION FOR ADJOURNMENT 341 MEETING UNTIL RESOLUTION OF DISPUTED
MATERIAL FACTS AND REQUEST FOR EVIDENTIARY HEARING:**

To the Office of the United States Trustee Joseph W. Allen, Esq AND Trustee Chapter 13
Trustee to the following party in the manner specified for each party below: **Method of Service**
Served by US mail in a postage paid envelope placed in the care and custody of the United States
Postal Service.

Name and Address of Party

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Buffalo, NY 14202
716-854-5636
ecf@buffalo13.com

Office of the United States Trustee
Joseph W. Allen, Esq
Olympic Towers
300 Pearl Street, Suite 401
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Phone: (716) 551-5541
Facsimile: (716) 551-5560

Mark K. Broyles

Dave P. Case

Non-Party- **disinterest Party**
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Suite 1800
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585-325-6202

**No Power of
Attorney**

**KEYBANK NATIONAL
ASSOCIATION**

c/o Fein, Such & Crane, LLP
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Rochester, NY 14614
(Notice of **disinterest Party**)

Michael J. Chatwin
disinterest Party
Nationstar Mortgage LLC d/b/a
Mr. Cooper
Shapiro, DiCaro & Barak, LLC
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Assigned: 09/06/2019

Beth Elaine Mooney
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Dated: January 21st, 2020

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Shane Christopher Buczek

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

In re:

CASE NO. 1-19-11441- CLB

Shane Christopher Buczek

(Filed 07/19/2019)

ORDER

The Court, having considered the debtors NOTICE OF MOTION FOR ADJOURNMENT 341 MEETING UNTIL RESOLUTION OF DISPUTED MATERIAL FACTS AND REQUEST FOR EVIDENTIARY HEARING FOR Key Bank National Association by Shane Christopher Buczek, hereby grants the motion. Where the Debtor has demonstrated good cause in this matter.
GRANTED

So, ordered.

Dated: _____

BY THE COURT

Honorable Judge Carl L. Bucki
United States Bankruptcy Court
For the Western District of New York